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No. 1096

In The

Supreme Court of the United States

October Term, 1967

WILLIAM HORACE ROBINSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on December 13, 1967, affirming his conviction on two counts of an indictment charging violation of Section 2314, Title 18, U.S.C.

OPINION BELOW

No printed opinion was filed by the Court below. A copy of the Order of Affirmance is annexed hereto as Appendix A.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on December 13, 1967. An order ex-

tending time to file petition for Writ of Certiorari to and including February 10, 1968, signed by Mr. Justice Stewart was entered on January 19, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) and Rule 22(2).

QUESTION PRESENTED

Did Petitioner violate Section 2314, Title 18, U.S.C. by merely causing the interstate transportation of two falsely made checks in the amount of $150.00 each?

STATUTE INVOLVED

The statute involved is Section 2314, Title 18, U.S.C., paragraph 2 of which provides:

> "Whoever, having devised or intending to devise any sceme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, *transports or causes to be transported,* or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of *money or property having a value of $5,000 or more*; . . . . ." (Emphasis added)

Petitioner's conviction was based on a violation of paragraph 3 of the statute, which provides:

> "Whoever, with unlawful or fraudulent intent, *transports* in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited. . . ." (Emphasis added)

STATEMENT OF THE CASE

Petitioner cashed two falsely made checks for $150.00 each at the Netherland Hilton Hotel in Cincinnati, Ohio, in February, 1966. These checks were drawn on a bank in West Monroe, Louisiana, and, in usual banking channels, were subsequently transported to West Monroe, Louisiana. It was conceded that Petitioner did not physically transport the checks, but that he merely caused their transportation in interstate commerce.

REASONS FOR GRANTING THE PETITION

This petition affords the Court an opportunity to unravel a particularly complex question of Federal criminal law. Is it the Congressional intent to include the nickel and dime criminal within the purview of the Federal judicial and penal system or to leave him perhaps where he belongs, subject to the laws of the state in which he commits his petty offense? This question was considered in *United States* v. *Sheridan,* 329 U.S. 379 (1946), a prosecution under Sec. 3 of the National Stolen Property Act. Footnote #5, page 381, of the opinion reads:

> "The pertinent text of Sec. 3 is as follows: 'Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been stolen, feloniously converted, or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged,* altered, or *counterfeited securities, knowing the same to have been falsely made, forged,* altered . . . . .'"

In commenting on this section the Court states, at page 390:

> "Nor can we treat forged checks differently from other securities, either because they are forged or because the forgery is done by 'little fellows' who perhaps were not the primary aim of the congressional fire. The statute expressly includes checks. It makes no distinction between large and small operators. There is no room for implying such a distinction in view of the absence of the $5000 limitation with respect to the transportation of forged checks. Whether or not Congress had in mind primarily such small scale transactions as Sheridan's, his operation was covered literally and we think purposively. Had this not been intended, appropriate exception could easily have been made."

Inclusion in the statute of the phrase "or cause to be transported" required the result reached in *Sheridan*.

Following *Sheridan*, it appears that Congress did attempt to create an "appropriate exception" by deleting from the statute the phrase "or causes to be transported." 62 United States Statutes at Large 806 (June 25, 1948) and 63 United States Statutes at Large 96 (May 24, 1949). Thus amended, the statute would seem to have required actual physical transportation of false checks in interstate commerce in order to justify Federal interdiction. The congressional fire apparently was aimed at those criminals whose massive operations justified the expense of travel interstate.

This was the form of the statute at the time *Pereira* v. *United States*, 347 U.S. 1 (1953) was decided. Pereira had fraudulently obtained possession of a check for $35,286.78 in Roswell, New Mexico and physically transported it to El Paso, Texas where it was deposited in a bank and subsequently mailed to a California bank for collection.

Despite the actual physical transportation by defendant, his conviction was upheld because of the *mailing*. In a very curious opinion, Mr. Chief Justice Warren, writing for the majority, said:

> "When Pereira delivered the check, drawn on an out-of-state bank, to the El Paso bank for collection, he 'caused' it to be transported in interstate commerce. It is common knowledge that such checks must be sent to the drawee bank for collection, and it follows that Pereira intended the El Paso bank to send this check across state lines. *United States* v. *Sheridan, supra,* at 391"
>
> *Pereira* v. *United States,* 347 U.S. 1, 9 (1953)

The reference to *Sheridan* is difficult to understand since *it* involved a prosecution under paragraph 3 of the statute at a time when the statute contained the phrase "or cause to be transported." *Pereira* involved a prosecution under paragraph 1 of Section 2314 which reads in pertinent part:

> "Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5000 or more. . . ."

Without making any reference to the fact that the phrase "or cause to be transported" was deleted by an amendment following *Sheridan,* the Court, at page 8, discloses reliance on Title 18 U.S.C. Section 2 (b) which provides:

> "Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such."

Since 2 (b) was added to Title 18 at the time of the general revision of Title 18 on June 25, 1948, (62 United States Statutes at Large 683) at the same time that the phrase "or

cause to be transported" was deleted from Section 2314, one might surmise a causal relation between the two occurrences. On the other hand, the deletion of the phrase, following so closely the decision in *Sheridan*, might well be interpreted as a congressional attempt to create the "appropriate exception" suggested in *Sheridan*.

We believe that the congressional intent was finally made clear (or hopelessly unclear and constitutionally deficient) [1] by a further amendment of Section 2314 on July 9, 1956, 70 United States Statutes at Large 507-8 when the phrase "or causes to be transported" was reinserted in the statute in paragraph 2 but was not reinserted in paragraph 3, the paragraph under which Petitioner's conviction was obtained. It seems apparent that Congress intended to create a meaningful distinction in the statute and to exclude the activities of the petty thief from the legitimate concern of the Federal judicial and penal systems. No other reason could account for the deliberate use of the phrase "or causes to be transported" in light of the existence of Title 18, Section 2 (b).

The instant case presents an excellent illustration of the wisdom of Congress in requiring actual transportation of forged checks in order to constitute a federal offense. The mere expense of interstate transportation would indicate that the activities of the wrongdoer were of sufficient magnitude to justify federal concern. Here, Petitioner cashed two checks totalling $300.00. The crime was committed and completed in Cincinnati, Ohio. No state charges were ever filed against Petitioner. Instead, the time and energy of a United States Attorney, a United

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[1] ". . . the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. . . ." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926) Cf., *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939).

States District Court Judge, the United States Court of Appeals for the Sixth Circuit and now the United States Supreme Court is being taken by a petty thief, sentenced to serve ten years imprisonment for the commission of a petty crime.

CONCLUSION

For the reasons set forth above, this Court should grant the instant Petition for Certiorari.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 17,705

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILLIAM HORACE ROBINSON,
Defendant-Appellant.

ORDER

(Filed December 13, 1967)

Before O'SULLIVAN, CELEBREZZE and McCREE, Circuit Judges.

IN THIS CAUSE, William Horace Robinson appeals from a judgment convicting him of two counts of an indictment charging violation of Section 2314, Title 18, U.S.C. The appellant cashed falsely made checks at the Netherland-Hilton Hotel in Cincinnati, Ohio. They were drawn on a Louisiana bank. Appellant's contention is that conviction under Section 2314 requires proof of actual interstate transportation of the falsely made securities. Section 2314 does not specifically refer to "causing to be transported" involved securities. However, Section 2 of Title 18 provides "Whoever willfully causes an act to be done which if directly performed by him or another would

be an offense against the United States, is punishable as a principal." This would cover the cashing of a check on an outstate bank, thus causing it to move in interstate commerce.

Appellant reviews the history of the involved statute and argues that it was the intent of Congress to limit Section 2314 to cases of actual transportation. We consider the statute is clear, and legislative history need not be consulted to understand its meaning. It condemns as a crime the conduct here involved.

Other contentions of the appellant were either abandoned or are without merit.

The judgment of the District Court is affirmed.

Entered by order of the Court.

/s/ Carl W. Reuss
Clerk

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was tried in the United States District Court for the Southern District of Ohio and convicted on two counts of unlawfully causing the interstate transportation of forged securities, in violation of 18 U.S.C. 2314.[1] He was sentenced to imprisonment for five years on each count, the terms to run consecutively. The court of appeals affirmed *per curiam* (Pet. App. A).

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[1] Count 3, charging the unlawful transportation of a stolen motor vehicle, was dismissed during trial.

The evidence (the sufficiency of which is not challenged) showed that in February 1966, using false identification, petitioner cashed two forged checks at the Netherland-Hilton Hotel in Cincinnati, Ohio (Tr. 9-20). Both checks were drawn on a bank in West Monroe, Louisiana, and both were accordingly forwarded through the normal channels of interstate commerce to the bank in West Monroe, where they were dishonored (R. 7A-7B; Tr. 4-5).

Petitioner's sole contention is that it is not a federal crime to "cause" the interstate transportation of forged securities unless the defendant himself physically transports them. This argument has no merit. It is clear that the reference to persons "causing" the interstate transportation of forged securities was deleted from the statute (18 U.S.C. 2314) in the 1948 revision of the Criminal Code only because Section 2(b) of the Code provided that one who causes an act to be done which, if performed directly, would be illegal may be punished as a "principal." See the Reviser's Notes to Sections 2 and 2314 of Title 18. Although in adding another offense to paragraph 2 of Section 2314 in 1956, Congress included the word "causes", there is no indication in the relevant legislative history that Congress intended by its inaction with respect to the remaining paragraphs to confine them to personal transportation. There was certainly no suggestion that Congress sought to render 18 U.S.C. 2(b) inapplicable to previously defined offenses.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1968.

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